

ORDER REGARDING REPRESENTATION SMITH COUNTY

Ex Parte :JAMES RAY PENDERGRAFT from: SMITH COUNTY
(Name of Applicant)

TRIAL COURT WRIT NO PD-0474-19

007TH JUDICIAL DISTRICT COURT FILED
COURT OF CRIMINAL APPEALS
10/25/2019
DEANA WILLIAMSON, CLERK

APPLICANT'S NAME (As reflected in judgment): JAMES RAY PENDERGRAFT

OFFENSE (As reflected in judgment): AGG ASSAULT W/DEADLY WEAPON

CAUSE NO. (As reflected in judgment): 007-1264-17

PLEA: _____ GUILTY ___ X ___ NOT GUILTY

SENTENCE: 35 YEARS TDCJ
(Terms of years reflected in judgment)

DATE: 03-29-2018

TRIAL DATE 03-29-2018

TRIAL JUDGE'S NAME (Judge presiding at trial): KERRY RUSSELL

APPEAL NO. (If applicable):

CITATION TO OPINION (If applicable): _____ S.W.3d _____

HEARING HELD: ___ X ___ YES ___ NO
(Pertaining to the application for writ of habeas corpus)

FINDINGS & CONCLUSIONS ENTERED BY HABEAS JUDGE:

X YES ___ NO (Pertaining to the application for writ of habeas corpus)

RECOMMENDATION: _____ GRANT _____ DENY _____ DISMISS _____ NONE
(Habeas judge's recommendation regarding application for writ of habeas corpus)

HABEAS JUDGE'S NAME: KERRY RUSSELL
(Judge presiding over habeas corpus proceeding)

NAME OF HABEAS COUNSEL IF APPLICANT IS REPRESENTED: _____

I certify that all applicable requirements of Texas Rule of Appellate Procedure 73.4 have been complied with in this habeas proceeding, including the requirement to serve on all the parties in the case any objections, motions, affidavits, exhibits, proposed findings of fact and conclusions of law, findings of fact and conclusions of law, and any other orders entered or pleadings filed in the habeas case.

_____/s/ Terry Morrow_____
Signature of District Clerk or Clerk's Representative

10.25.2019
Date Signed



Smith County Courthouse
100 N. Broadway, Room 204
Tyler, Texas 75702

Penny Clarkston
Smith County District Clerk

(903) 590-1660
Fax (903) 590-1661

In the 007th Judicial District Court of Smith County,
Texas, the Honorable KERRY L RUSSELL, Judge Presiding,
the following proceedings were held and the following
instruments and other papers were filed in this cause, to wit:

Trial Court Cause No. 007-1264-17

STATE OF TEXAS, Appellant

Vs.

JAMES RAY PENDERGRAFT, Appellee



CAUSE NO. 007-1264-17

1 of 1

THE STATE OF TEXAS

VS.

JAMES RAY PENDERGRAFT

INDEX

| Document Title | File Date | Page(s) |
|---------------------------|------------|---------|
| COVER | 10/25/2019 | 1 - 1 |
| CAPTION | 10/25/2019 | 2 - 2 |
| INDEX | 10/25/2019 | 3 - 3 |
| Appeal Court Order | 10/23/2019 | 4 - 5 |
| Order Appointing Attorney | 10/24/2019 | 6 - 6 |
| Order ON PRO SE PETITION | 10/25/2019 | 7 - 9 |
| CERTIFICATION | 10/25/2019 | 10 - 10 |

FILED
PENNY CLARKSTON
DISTRICT CLERK

2019 OCT 23 PM 1:40

SMITH COUNTY, TEXAS
BY *tmorrow*
CLERK



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0474-19

JAMES RAY PENDERGRAFT, Appellant

v.

THE STATE OF TEXAS

**ORDER REGARDING REPRESENTATION
SMITH COUNTY**

Per curiam.

ORDER

Appellant was convicted of aggravated assault in cause number 007-1264-17 in the 7th District Court of Smith County. Appellant was sentenced to confinement for 35 years. The court of appeals affirmed the judgment of the trial court. Pendergraft v. State, No.12-18-00091-CR (Tex. App. —Tyler, delivered April 17, 2019). The Appellant's Pro Se petition for discretionary review was granted by this Court on October 23, 2019. Appellant is entitled to representation before this Court at this time. See Article 1.051(a)(d)(2), V.A.C.C.P. Appellant is without representation in

this Court. Accordingly, the trial court is ordered to determine if Appellant is currently represented by counsel, and if so, to inform this court who represents Appellant. If Appellant is not currently represented by counsel and desires counsel, the trial court must first determine whether Appellant is indigent. If the trial court finds Appellant is indigent, that court shall appoint an attorney to represent Appellant before this court in regard to PDR No. PD-0474-19, in accord with the provisions of Articles 1.051 and 26.04, V.A.C.C.P. Any hearing conducted pursuant to this order shall be held within 30 days of the date of this order. The trial court's order appointing counsel, any findings of fact, affidavits, or transcription of the court reporter's notes and any other supplementation of the record shall be returned to this court within 45 days of the date of this order.

IT IS SO ORDERED THIS THE 23RD DAY OF OCTOBER, 2019.


DO NOT PUBLISH

FILED
STON
CAUSE NO. 007-1264-17
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THE STATE OF TEXAS

VS.

JAMES RAY PENDERGRAFT

CLERK
BY: 
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§
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IN THE 7TH JUDICIAL

DISTRICT COURT OF

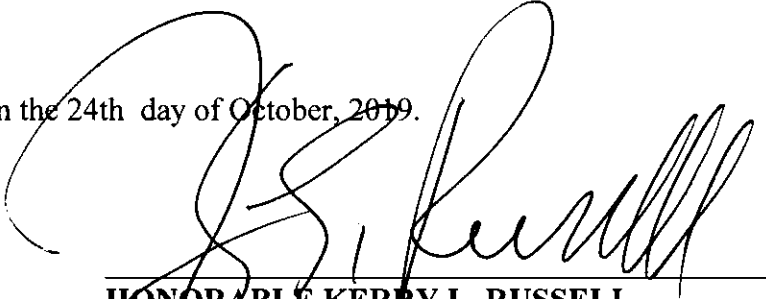
SMITH COUNTY, TEXAS

ORDER APPOINTING COUNSEL ON P.D.R.

BE IT KNOWN on this date, the Court being of the opinion that since the Defendant is currently incarcerated in the Texas Department of Corrections is unable to employ counsel to represent him, and that the Texas Court of Criminal Appeals granted the Defendant's Pro Se Petition for Discretionary review on October 23, 2019 and Ordered the Trial Court to appoint Counsel if the Defendant is indigent and the Court found the Defendant indigent; IT IS THEREFORE ORDERED that A. REEVE JACKSON, a practicing attorney in and for the State of Texas, is hereby appointed to represent the Defendant on his Pro Se Petition for Discretionary Review as ordered by the Court of Criminal Appeals of Texas under No. PD-0474-19.

IT IS SO ORDERED.

SIGNED AND ENTERED on the 24th day of October, 2019.


HONORABLE KERRY L. RUSSELL
Judge, 7th Judicial District Court
Smith County, Texas

cc: State

James Pendergraft #02193113
c/o Coffield Unit
2661 FM 2054
Tennessee Colony, Texas 75884

A. Reeve Jackson-via Email
P.O. Box 8355
Tyler, TX 75711
areevejackson@gmail.com

FILED
PENNY CLARKSTON
DISTRICT CLERK

2019 OCT 25 PM 1:03

CAUSE NO. 007-1264-17

THE STATE OF TEXAS

VS.

JAMES RAY PENDERGRAFT

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IN THE 7TH DISTRICT

COURT *in and* FOR

SMITH COUNTY, TEXAS

ORDER
ON PRO SE PETITION FOR DISCRETIONARY REVIEW

On this date came on to be heard the Order (dated October 23, 2019); and a copy of which is attached hereto) of the Texas Court of Criminal Appeals in Cause No. PD-0474-19 in connection the Pro Se Petition for Discretionary Review to the Court of Criminal Appeals of Texas, filed by JAMES RAY PENDERGRAFT in connection with trial court Cause No. 007-1264-17. The Trial Court reviewed the court's file in Cause No. 007-1264-17; and took judicial notice of same and the contents. The Trial Court having considered the said Order; and accordingly the Trial Court finds that Defendant JAMES RAY PENDERGRAFT was indigent and was represented at the trial of the case by KURT NOELL. The Defendant appealed his conviction and sentence to the Twelfth Court of Appeals in Cause No. 12-18-00091-CR; Defendant remained indigent and was represented by court appointed appellate counsel JAMES W. HUGGLER, JR. The Defendant's conviction was affirmed on April 17, 2019. The Defendant thereafter filed his Pro Se Petition for Discretionary Review with the Texas Court of Criminal Appeals in Cause No. PD-0474-19. The Court further finds that the said Texas Court of Criminal Appeals recent Order required the Trial Court to determine certain issues and report back to the Court.

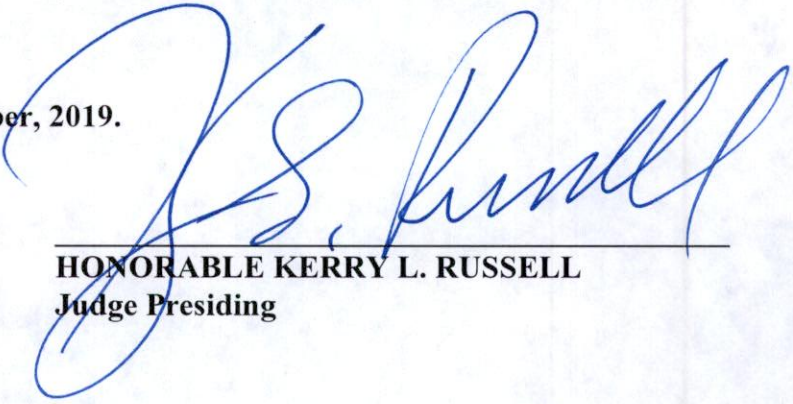
The Court makes the following additional findings of fact:

1. Defendant was found indigent prior to trial and has remained indigent.
2. Defendant was representing himself when he filed his Pro Se Petition for Discretionary Review with the Texas Court of Criminal Appeals.
3. The Court has therefore appointed AUSTIN REEVE JACKSON to represent the Defendant in his Pro Se Petition for Discretionary Review with the Texas Court of Criminal Appeals.

IT IS ORDERED that the Clerk forward a certified Supplemental Transcript including a copy of these Findings of Fact and Conclusions of Law and the Order Appointing Counsel on P.D.R. dated October 24, 2019 to the Court of Criminal Appeals of Texas.

IT IS SO ORDERED.

SIGNED this 25th day of October, 2019.


HONORABLE KERRY L. RUSSELL
Judge Presiding

cc: State
Defendant
A. Reeve Jackson



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0474-19

JAMES RAY PENDERGRAFT, Appellant

v.

THE STATE OF TEXAS

ORDER REGARDING REPRESENTATION
SMITH COUNTY

Per curiam.

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this Court. Accordingly, the trial court is ordered to determine if Appellant is currently represented by counsel, and if so, to inform this court who represents Appellant. If Appellant is not currently represented by counsel and desires counsel, the trial court must first determine whether Appellant is indigent. If the trial court finds Appellant is indigent, that court shall appoint an attorney to represent Appellant before this court in regard to PDR No. PD-0474-19, in accord with the provisions of Articles 1.051 and 26.04, V.A.C.C.P. Any hearing conducted pursuant to this order shall be held within 30 days of the date of this order. The trial court's order appointing counsel, any findings of fact, affidavits, or transcription of the court reporter's notes and any other supplementation of the record shall be returned to this court within 45 days of the date of this order. IT IS SO ORDERED THIS THE 23RD DAY OF OCTOBER, 2019.

DO NOT PUBLISH

Smith County Courthouse
100 N. Broadway, Room 204
Tyler, Texas 75702



(903) 590-1660
Fax (903) 590-1661

**Penny Clarkston
Smith County District Clerk**

I, Penny Clarkston, Clerk of the 007th Judicial District Court of Smith County, Texas, do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedure 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b).

Given under my hand and seal of office in Tyler, Smith County, Texas
on this the 25th day of October, 2019.

Penny Clarkston, Smith County
District Clerk

By: /S/ **Terry Morrow**
Terry Morrow, Deputy